

REMARKS

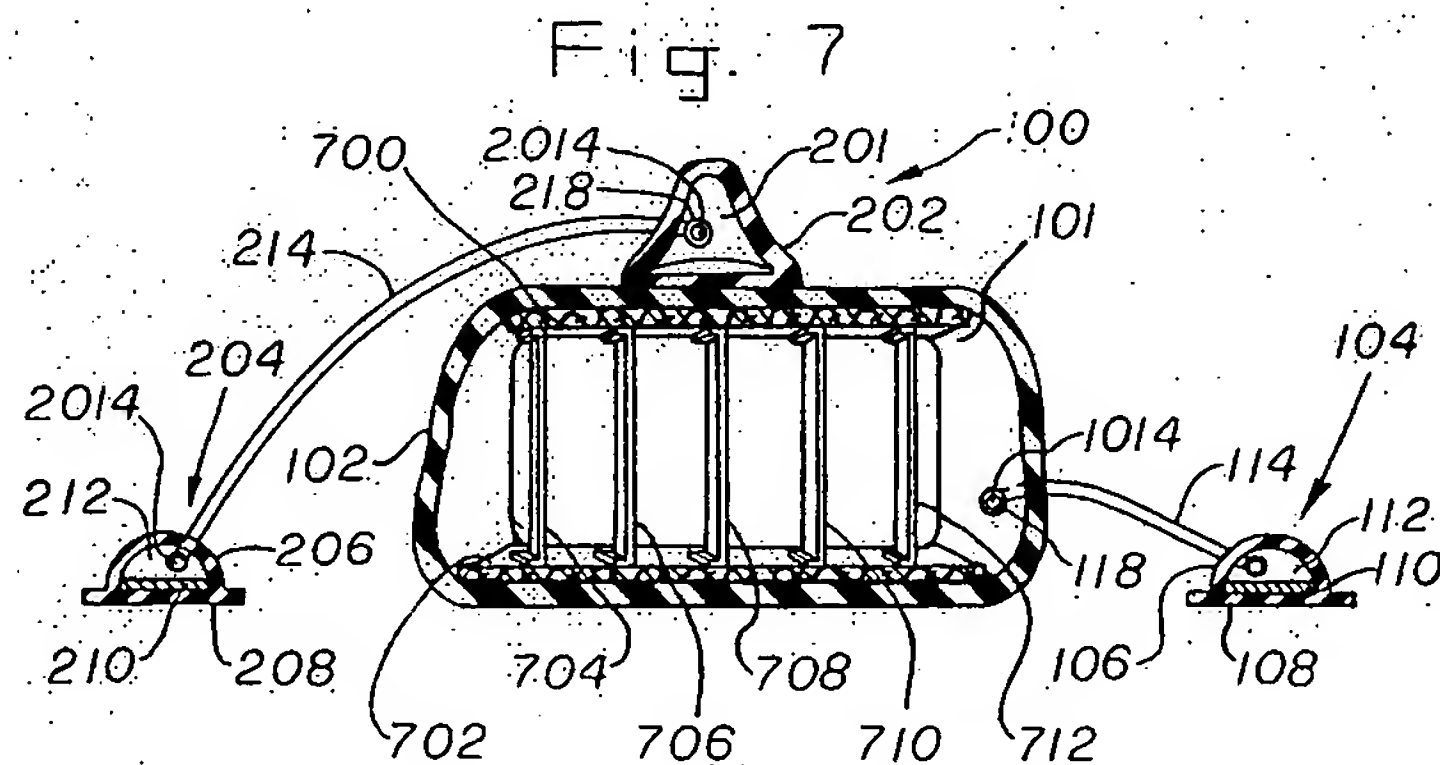
The above-identified application has been reviewed in light of the Office Action mailed July 28, 2005. By the present amendment, the Applicant has amended claim 1 and has canceled claims 21 and 26. Claims 23-25 were withdrawn by the Examiner as being directed towards a non-elected species. It is respectfully submitted that the claims pending in the application do not introduce new subject matter, are fully supported by the specification, and are patentable over the cited prior art. Prompt and favorable consideration of these claims is earnestly sought.

The Office Action rejected claims 15-18, 20, and 26 under 35 U.S.C. § 102 (b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103 (a) as obvious over U.S. Patent No. 4,651,717 to Jakubczak (the '717 patent). According to the Office Action, the '717 patent discloses a shaft 214 and an inflatable bladder 201 having a conical shape when inflated (see Figure 7 reproduced below). The Office Action also asserted that movement of the device disclosed in the '717 patent would further separate tissue and create a working space. In addition, it was asserted that the device of the '717 patent is a retractor since it moves tissue or, alternatively, it would have been obvious that the device of the '717 patent is a retractor since it moves tissue.

As presently amended, claim 15 recites, *inter alia*, an apparatus including a shaft, an inflatable bladder, and a cannula, "the inflatable bladder configured to separate adjacent layers of tissue when the inflatable bladder is inflated and axially moved with respect to the cannula, thereby defining a working space."

The '717 patent relates to a device having one or more inflatable bladders adapted for reconstructive plastic surgery and is adapted to expand soft tissue in preparing a space for an implantable mammary prosthesis. The '717 patent discloses that the device 100 includes an

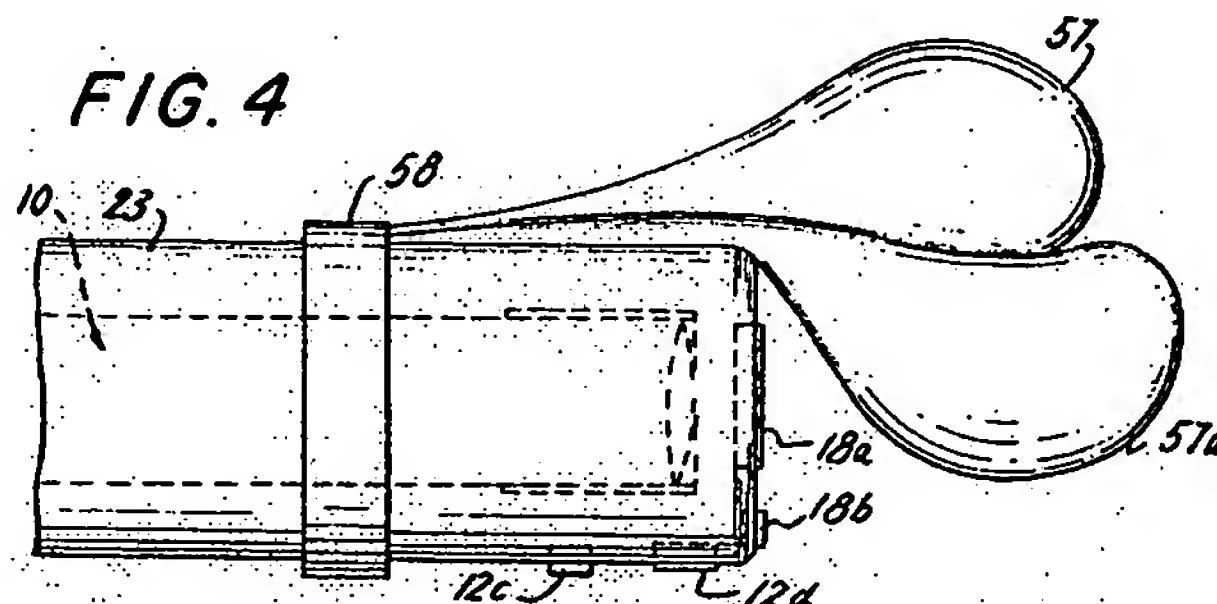
inflatable bladder 202 coupled to a hollow tube 214. The inflatable bladder 202 and the hollow tube 214 are formed from a biocompatible silicone elastomer (see '717 patent Column 4, lines 60-68 and Column 3, lines 47-49, respectively). The '717 patent discloses that the device 100 includes inflatable balloons having generally hemispherical shapes. Furthermore, the '717 patent does not disclose a cannula or suggest using the disclosed device in combination with a cannula.



The '717 patent does not teach or fairly suggest a device including, *inter alia*, an apparatus including a cannula and an inflatable bladder "configured to separate adjacent layers of tissue when the inflatable bladder is inflated and axially moved with respect to the cannula, thereby defining a working space" as recited in amended claim 15. Therefore, it is respectfully submitted that amended claim 15 is not anticipated or suggested by the '717 patent and the rejection of the Office Action has been overcome. Claims 16-18 and 20 depend directly or indirectly from amended independent claim 15 and it is respectfully submitted that these claims are also allowable over the '717 patent.

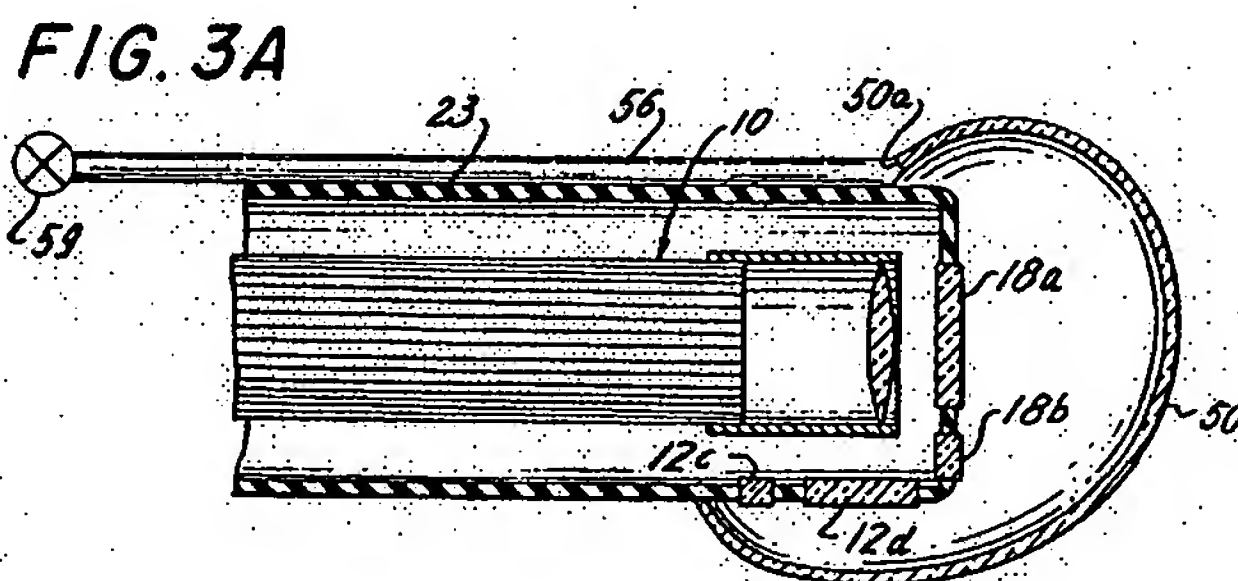
In the Office Action, claims 15-21 and 26 were rejected under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent No. 3,417,745 to Sheldon (the '745 patent) or, in the alternative, under 35 U.S.C. § 103 (a) as obvious over the '745 patent. According to the Office Action, the '745 patent discloses a rigid shaft and an inflatable bladder having a wedge shape when inflated

(See Figure 4 reproduced below). In addition, it was asserted that it would have been obvious that the inflatable bladder of the '745 patent has the shape of a wedge since it tapers in the proximal direction.



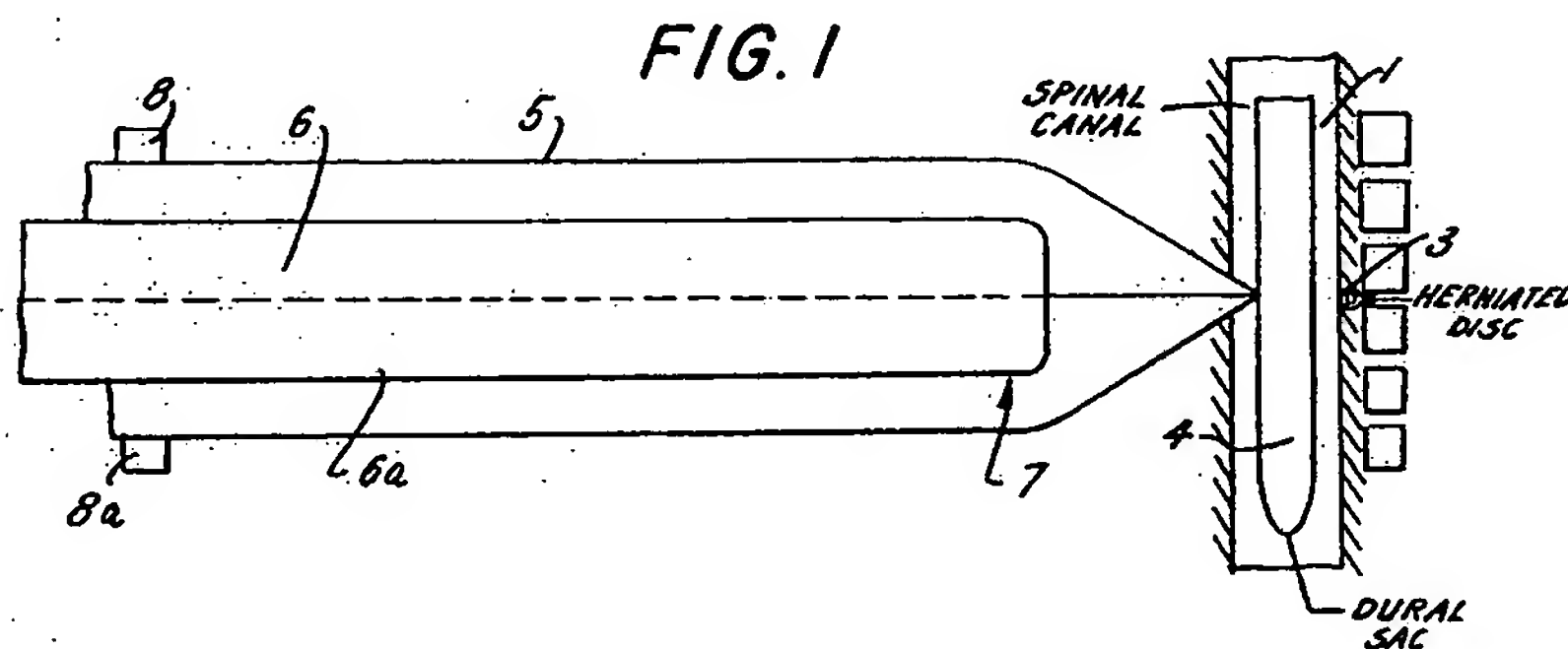
The '745 patent relates to a device having a shaft and an inflatable member 50 (see Figure 3A reproduced below). The shaft has a closed distal end having viewing windows 18a and 18b disposed therein. Additionally, the inflatable member 50 is adapted for urging soft tissue away from the distal end of the shaft thereby allowing improved viewing of the area through an image conductor 10. Specifically, the '745 patent discloses (Column 8, lines 49-54):

[i]t was found that in many examinations the spinal fluid was turbid an impaired is [sic] visibility. I have solved this problem by the construction in which an inflatable transparent member is mounted at the distal end of the spinescope. The inflated member 50 displaces the turbid spinal fluid and produces thereby a clear field of vision.



Further still, the '745 patent discloses (See Column 8, line 74 – Column 9, line 23 and Figure 4 reproduced above) that "[i]n some cases it was found necessary to provide an adequate space between the optical viewing system such as 19, or 19c, and the examined part" and that "[t]he inflation of the member 57 causes separation of the examined part from the distal end of the spinescope."

In the embodiment shown in Figure 4 above, the inflatable members 57 and 57a are not disposed at the distal end of the shaft, but are longitudinally spaced apart from the distal end. In addition, the needle 5 (See Figure 1 reproduced below) disclosed in the '745 patent has an open proximal end and a closed distal end.




Further still, the '745 patent does not teach or fairly suggest moving the inflatable member with respect to the cannula to separate adjacent layers of tissue.

Therefore, the '745 does not teach or fairly suggest an apparatus including, *inter alia*, a shaft, a cannula and an inflatable bladder "configured to separate adjacent layers of tissue when the inflatable bladder is inflated and axially moved with respect to the cannula, thereby defining a working space" as recited in amended claim 15. It is respectfully submitted that amended claim 15 is not anticipated or suggested by the '745 patent and the rejection of the Office Action has been overcome. Claims 16-20 depend directly or indirectly from amended independent claim 15 and it is respectfully submitted that these claims are also allowable over the '745 patent.

Appl. No. 10/729,768
Amdt. dated November 28, 2005
Reply to Office Action mailed July 28, 2005

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims pending in the application, namely claims 15-20, are in condition for allowance. If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Applicants' undersigned attorney at (631) 501-5713.

Respectfully submitted,


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